

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

Gerken Materials, Inc.
8200 Sylvania Avenue
Sylvania, Ohio 44036

Proceedings Pursuant to
Section 113(a)(1) of the
Clean Air Act, 42 U.S.C.
§ 7413(a)(1)

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NOTICE OF VIOLATION

EPA-5-01-OH-26

NOTICE OF VIOLATION

The Administrator of the United States Environmental Protection Agency (U.S. EPA) is issuing this Notice of Violation under Section 113(a)(1) of the Clean Air Act (Act), 42 U.S.C. § 7413(a)(1). U.S. EPA finds that Gerken Materials, Inc. (Gerken) has violated the Ohio State Implementation Plan (SIP), as follows:

Statutory and Regulatory Background

- 1) U.S. EPA approved the Ohio Administrative Code (OAC) Chapter 3745-31 as part of the federally enforceable Ohio State Implementation Plan on October 31, 1980 (45 Fed. Reg. 72119). This approval included OAC Rule 3745-31-02.
- 2) OAC Rule 3745-31-02(A) states that no person shall cause, permit, or allow the installation of a new source of air pollutants without first obtaining a permit to install from the director.
- 3) U.S. EPA approved OAC Chapter 3745-35 as part of the federally enforceable Ohio State Implementation Plan on June 10, 1982 (47 Fed. Reg. 25144). This approval included OAC Rule 3745-35-02.
- 4) OAC Rule 3745-35-02(A) states that no person may cause, permit, or allow the operation or other use of any air contaminant source without applying for and obtaining a permit to operate from the Ohio Environmental Protection Agency in accordance with the requirements of this rule.

FINDINGS OF FACT


- 5) Gerken owns and operates a hot mix asphalt facility (facility) at 8200 Sylvania Avenue, Sylvania, Ohio.
- 6) The facility was modified with the installation of a 400 ton per hour Astec eight foot double barrel dryer drum coater (drum) in March 2000.
- 7) The drum installed by Gerken replaced a prior existing drum at the facility.
- 8) The drum is a "new source" as that term is defined at OAC Rule 3745-31-01(I).
- 9) Gerken installed a diesel fired generator (generator) at its facility in March 2000.
- 10) The generator is a "new source" as that term is defined at OAC Rule 3745-31-01(I).
- 11) New sources are subject to the permit to install (PTI) requirements of OAC Rule 3745-31-02(A).
- 12) Gerken does not have a current PTI at the facility.
- 13) New sources are subject to the permit to operate (PTO) requirements of OAC Rule 3745-35-02(A).
- 14) Gerken does not have a current PTO at the facility.

FINDINGS OF VIOLATION

- 15) Gerken failed to obtain a PTI prior to installation of the drum and generator, in violation of OAC Rule 3745-31-02(A) and Section 110 of the Act, 42 U.S.C. § 7410.
- 16) Gerken failed to obtain a PTO prior to operation of the drum and generator, in violation of OAC Rule 3745-35-02(A) and Section 110 of the Act, 42 U.S.C. § 7410.

9-27-01

Date



Bharat Mathur, Director
Air and Radiation Division

1. Section 111 of the Act, 42 U.S.C. § 7411, authorizes the Administrator of the U.S. EPA to promulgate regulations establishing standards of performance for new sources (New Source Performance Standard or NSPS).
2. On December 23, 1971, in accordance with Section 111 of the Act, U.S. EPA promulgated Standards of Performance for New Stationary Sources: General Provisions, codified at 40 C.F.R. Part 60, Subpart A. 36 Fed. Reg. 24877 (December 23, 1971).
3. Pursuant to 40 C.F.R. § 60.1(a), the NSPS regulations apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the proposal date of publication of any standard applicable to that facility.
4. "Affected facility" is defined at 40 C.F.R. § 60.2, with reference to a stationary source, as any apparatus to which a standard is applicable.

5. Pursuant to 40 C.F.R. § 60.8(a), each owner or operator of an affected facility shall conduct performance test(s) no later than 180 days after initial startup of the facility.
6. On March 8, 1974, in accordance with Section 111 of the Act, 42 U.S.C. § 7411, U.S. EPA promulgated Standards of Performance for Hot Mix Asphalt Facilities, codified at 40 C.F.R. Part 60, Subpart I. 39 Fed. Reg. 9314 (March 8, 1974).
7. Pursuant to 40 C.F.R. § 60.90(b), the provisions set forth at 40 C.F.R. Part 60, Subpart I, apply to each hot mix asphalt facility that commences construction or modification after June 11, 1973.
8. The rule at 40 C.F.R. § 60.92(a)(2) states that no affected facility shall discharge to the atmosphere any gases that exhibit 20 percent opacity, or greater.

FINDINGS OF FACT

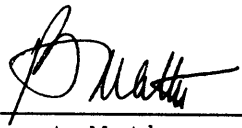
9. Gerken owns and operates a hot mix asphalt facility (facility) at 8200 Sylvania Avenue, Sylvania, Ohio.
10. The facility (Ohio source P902) is a hot mix asphalt facility as that term is defined at 40 C.F.R. § 60.91(a).
11. The facility is an affected facility as that term is defined at 40 C.F.R. § 60.2.
12. The facility is subject to the provisions of 40 C.F.R. Part 60 Subpart A and 40 C.F.R. Part 60 Subpart I, including 40 C.F.R. §§ 60.8(a) and 60.92(a)(2).
13. The facility was modified with the installation of a 400 ton per hour Astec eight foot double barrel dryer drum coater (drum) in March 2000.
14. Construction or modification began at the facility after June 11, 1973.
15. The modified hot mix asphalt facility began production May 1, 2000.
16. Representatives of U.S. EPA conducted an inspection of Gerken's Sylvania facility on July 11, 2001. Visual emission readings taken during the inspection showed that the facility exceeded 20% opacity for four six-minute

averages from the baghouse exhaust during a 36 minute period and exceeded 20% opacity for four six-minute averages from the top of the truck loading silo during a 30 minute period.

FINDINGS OF VIOLATION

17. Gerken failed to timely conduct a performance test at the facility, in violation of 40 C.F.R. § 60.8(a).
18. Visual emission readings taken during the July 11, 2001 inspection of the facility indicated that Gerken exceeded the applicable opacity limit, in violation of 40 C.F.R. § 60.90(a)(2).
19. Gerken's failure to achieve compliance with the provisions of 40 C.F.R. Part 60, Subpart A and 40 C.F.R. Part 60, Subpart I, as alleged above, constitutes violations of Section 111 of the Act, 42 U.S.C. § 7411.

9-27-01
Date



Bharat Mathur, Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Loretta Shaffer, do hereby certify that a Notice of Violation and Finding of Violation was sent by Certified Mail, Return Receipt Requested, to:

Julian Gerken, President
Gerken Materials, Inc.
9-051 U.S. 24
P.O. Box 607
Napoleon, Ohio 43545

I also certify that a copy of the Notice of Violation and Finding of Violation was sent by first class mail to:

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

and

Karen Granata, Administrator
City of Toledo
Division of Environmental Services
348 South Erie Street
Toledo, Ohio 43602

on the 28 day of September, 2001.

Barbara Mack for
Loretta Shaffer
Secretary, AECAS (MN/OH)

7099 3400 0000 9580 9144
CERTIFIED MAIL RECEIPT NUMBER